IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 25TH JUNE 2007 / WPC ASHADHA 1929

WP(C).No. 19429 of 2007(K)

OS.434/1996 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONER:

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1. KAYYA, W/O ALIKUNJI,
   THADATHIL CHEENIKKAPURATH HOUSE,
   PUTHANCHIRA, THRISSUR DIST.

2. KUNJIMOHAMMED, AGED 57 YEARS,
   S/O ALIKUNJI, -DO- -DO-

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

RESPONDENTS:

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1. ABDUL ASEES, S/O ALIKUNJI,
   THADATHIL CHEENIKKAPURATH HOUSE,
   VADAKKUMMURI DESOM, THUTHANCHIRA,
   THRISSUR DIST.

2. ABDUL MAJEED, S/O -DO- -DO-

3. ABDUL SALAM, -DO- -DO-

4. KOCHALEEMA, W/O KUNJABDU,
   KOOTTUNGAPARAMBIL HOUSE,
   KAIPAMANGALAM, CHENDRAPPINNY, THRISSUR.

5. RABIYA, W/O AKBAR,
   AIKARA HOUSE, PUTHANCHIRA,
   THRISSUR DIST.

6. SUHARA, W/O KOCHUMOIDEEN,
   KONGARASSERY, PUTHANCHIRA,
   THRISSUR DIST.

7. VIKRAMAN, S/O KAMALAKSHY,
   THOTTAPPILLY HOUSE,
   PUTHANCHIRA, THRISSUR DIST.

8. MAJEED, S/O ALI,

MANNANTHARA HOUSE,
PUTHANCHIRA, THRISSUR DIST.

9. SALIM, S/O ALI, -DO-

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 19429 OF 2007 K

Dated this the 25th June, 2007.

JUDGMENT

This writ petition is filed seeking to quash the order of the Additional Sub Judge, Irinjalakuda in I.A.2126/06 in O.S.434/96. The fight is between persons who claim to be the legal representatives of deceased Alikunji. According to the petitioners in the I.A. the first petitioner is the wife of Alikunji and the second petitioner is his son and the said fact has been declared by the trial court in O.S.223/89 and appeal is even now pending before this Court A.S.1029/98. There is a subsequent suit O.S.434/96 for partition and the issue involved in that case is who are all the legal representatives of deceased Alikunji. So, the point whether the present petitioners before the Additional Subordinate Judge's Court in I.A.2126/06 are the legal heirs of deceased Alikunji is the short question. That question is pending adjudication before the High Court as A.S.1029/98. When it is so, it is not just and correct to proceed with O.S.434/96 to have a determination of the matter. Therefore, the rejection of the prayer for stay of the suit under Section 10 of the Civil Procedure Code is incorrect and therefore it is set aside and O.S.434/96 pending before the Subordinate Judge's Court, Irinjalakuda

is stayed under Section 10 of the Civil Procedure Code. Since a 1996 suit is pending before the Subordinate Judge's Court, Registry is directed to bring to the notice of the Judge hearing first appeals regarding A.S.1029/98. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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